



The only issue before the Board on this appeal is whether claimant sustained personal injury by accident arising out of and in the course of his employment with respondent.

**FINDINGS OF FACT & CONCLUSIONS OF LAW**

Having reviewed the evidentiary record compiled to date, the Board makes the following findings of fact and conclusions of law:

The preliminary hearing Order should be affirmed.

Claimant has been employed by Western Industries, formerly K-Square, for approximately two years as a door operator. Claimant testified that his job required lifting parts weighing from 30-65 pounds as well as pallets that weighed 20-40 pounds.

The claimant testified that on April 29, 2001, he was stacking a box on a pallet when he felt like he had pinched something in his lower back. The claimant further testified that he felt something pull and give in his rectum. The claimant noted that when he bent over he could feel something protruding. The claimant testified that he notified the shift supervisor of the incident the next day.

The claimant sought medical treatment on April 30, 2001, at William Newton Memorial Hospital's emergency room. The claimant was treated at the emergency room with pain medication and two types of salve. Dr. Daehnke was the attending physician and completed the physician assessment portion of the Out Patient and Emergency Record which noted: "rectal pain started 2 days ago after hard stool." Dr. Daehnke also prepared a return-to-work form on which he indicated the condition was not work-related. The claimant was scheduled for a return appointment with the doctor in two days and was released to return to work with lifting and carrying restrictions of occasionally up to 10 pounds.

The claimant returned for treatment with Dr. Daehnke on May 2, 2001, and May 3, 2001. On May 3, 2001, Dr. Daehnke filled out a form "Disability Claim Attending Physician Statement" which was checked that claimant's condition was work-related. Dr. Daehnke imposed restrictions of sit-down work only. Dr. Daehnke's office notes indicated that "I have suggested that this is probably a workman's comp and I'm sure there will be some discussion on this."

The claimant was referred to Dr. Johnstone who recommended continued conservative treatment consisting of Sitz baths, stool softeners and analgesics. On May 24, 2001, Dr. Johnstone noted the claimant's condition had completely resolved and released claimant to work without restrictions. The claimant returned to his regular job duties.

The contemporaneous medical record of claimant's visit to the emergency room seeking treatment specifically noted that claimant complained of an onset of rectal pain two days previously after a hard stool. In addition, although it was noted that claimant did heavy lifting at work, there was no mention of a specific incident while lifting at work. Dr. Daehnke noted the condition was not work-related. The claimant denies telling the doctor anything about the injury being related to a hard stool and instead asserts that he advised the doctor he hurt himself at work.

The respondent's safety and health supervisor noted that claimant did not work the day of the alleged incident and had instead advised his supervisor that his bottom was sore and he could not work that day.

Judge Clark was in the unique position to observe the witnesses testify at the preliminary hearing and assess their credibility. Based upon the various inconsistencies noted in the record, the Board affirms the Judge's finding that claimant, at this juncture of the proceedings, has failed to prove that he injured himself at work as alleged.

### **AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge John D. Clark dated June 28, 2001, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of August 2001.

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BOARD MEMBER

c: Brian D. Pistotnik, Attorney, Wichita, Kansas  
D. Steven Marsh, Attorney, Wichita, Kansas  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Workers Compensation Director